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DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED-2013-OESE-0062]

Proposed priority and requirements--Education Facilities
Clearinghouse

CFDA Number: 84.215T.

AGENCY: Office of Elementary and Secondary Education,
Department of Education.

ACTION: Proposed priority and requirements.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education proposes a priority and requirements under the Education Facilities Clearinghouse program and may use one or more of the priority and requirements for competitions in fiscal year (FY) 2013 and later years. We intend to award funds under a cooperative agreement to support the collection and dissemination of best practices for the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing elementary and secondary education facilities. We intend to establish a Clearinghouse to help stakeholders recognize the linkages between the school facility and three areas: academic

instruction, student and community well-being, and school fiscal health.

DATES: We must receive your comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. We encourage you to submit comments well in advance of this date.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by e-mail. To ensure we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term "Education Facilities Clearinghouse" at the top of your comments.

Federal eRulemaking Portal: Go to www.regulations.gov to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under "How To Use Regulations.gov" in the Help section.

Postal Mail, Commercial Delivery, or Hand Delivery. If you mail or deliver your comments about these proposed priorities and requirements, address them to the Office of

Elementary and Secondary Education (Attention: Education Facilities Clearinghouse Grants-Comments), U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP) room 10073, Washington, DC 20202-6450.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Pat Rattler. Telephone: (202)245-7893 or by e-mail: Pat.Rattler@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities and requirements, we urge you to identify clearly the specific priority or requirement that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563

and their overall requirement of reducing regulatory burden that might result from these proposed priorities and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 3W110, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary to aid an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the Education Facilities Clearinghouse is to provide technical assistance and training on the planning, design, financing, procurement, construction, improvement, operation, and

maintenance of safe, healthy, and high-performing elementary and secondary education facilities.

Program Authority: 20 U.S.C. 7131; 7243-7243b.

Background:

The Education Facilities Clearinghouse is intended to assist States, local educational agencies (LEAs), and schools in creating safe, healthy, and high-performing education facilities by collecting and disseminating best practices for facilities planning, design, financing, procurement, construction, improvement, operation, and maintenance.

With this array of services, it is the Department's intent to use the Education Facilities Clearinghouse to assist education stakeholders in creating and sustaining higher quality environments for students, educators, and their communities. There is a growing body of research linking school facility quality to educational outcomes and documenting inequality in the distribution or quality of facilities:

- **Inequality in School Facilities:** There are significant inequalities in capital investment and in the availability of science labs, art rooms, music rooms, and gymnasiums

between schools in low-income areas and schools in more affluent areas.¹

- Facilities and Health: Air quality, acoustics, levels of thermal comfort, and lighting can affect the health and well-being of school occupants and have been linked in a small number of studies to student educational outcomes.²
- Facilities and Communities: School facilities affect students and their communities. School siting, size, efficiency, and design have implications for the community surrounding the school.³
- Facilities and Behavior: There is evidence of a link between various aspects of a school's physical environment, on the one hand, and problematic student behavior in high

¹ U.S. Department of Education: National Center for Education Statistics, Public School Principals' Perceptions of Their School Facilities: Fall 2005, NCES 2008-011 (Washington, D.C.: National Center for Education Statistics, 2008), retrieved April 2013.

² Earthman, G.I., C.S. Cash, and D. Van Berkum. 1995. "Student achievement and behavior and school building condition." *Journal of School Business Management*, 8(3): 26-37.

and

Shaughnessy, R., U. Shaughnessy, et al. 2006. "A preliminary study on the association between ventilation rates in classrooms and student performance." *Indoor Air* 16(6):465-468.

³ "School Siting Guidelines," Environmental Protection Agency, accessed April 2013, <http://www.epa.gov/schools/siting/>.

schools and the retention of teachers across elementary and secondary schools, on the other hand.^{4 5}

With the proposed priority and requirements, we seek to build on the efforts we began with the FY 2010 Education Facilities Clearinghouse competition by clarifying the major goals of the Clearinghouse in order to address many of the concerns about the status of education facilities and by aligning this program with the Department's other initiatives relating to health and safety. One such initiative is the U.S Department of Education's Green Ribbon Schools (ED-GRS) program.

PROPOSED PRIORITY:

This notice contains one proposed priority.

Proposed Priority--Establishment of the Clearinghouse.

Background:

With the proposed priority, we reaffirm the central purpose of the Clearinghouse, as stated in the notice

⁴ Buckley, Schneider, and Shang, The Effects of School Facility Quality on Teacher Retention in Urban School Districts. National Clearinghouse for Educational Facilities. February 2004, retrieved April 2013. <http://www.ncef.org/pubs/teacherretention.pdf>.

⁵ Revathy Kumar, Patrick O'Malley, and Lloyd Johnston, "Association between physical environment of secondary schools and student problem behavior: A national study, 2000-2003," Environment and Behavior 40, no. 4 (2008): 455-486, retrieved December 2012 from DOI: 10.1177/0013916506293987.

inviting applications announced for the FY 2010 competition (75 FR 34441), and clarify the major goals of the Clearinghouse's core activities. The purpose of the Clearinghouse is to provide technical assistance and training on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of elementary and secondary school facilities. The major goals we seek to address with this priority are: first, to highlight the role that school facilities might play in reducing education inequity and facilitating increased academic achievement; second, to better align the work of the Clearinghouse with the ED-GRS program; and, lastly, to preserve the role of the Clearinghouse in helping schools retrofit their facilities to increase security and student safety.

The ED-GRS program honors schools that are exemplary in three key areas: reducing environmental impact and costs; improving the health and wellness of students and staff; and providing effective environmental and sustainability education, which incorporates science, technology, engineering and mathematics (STEM), civic skills, and green career pathways. To better align with the first two GRS-ED key activities, the proposed priority would direct the Clearinghouse to help education

stakeholders understand how to use education facilities to improve community health and safety and student achievement, identify cost-saving opportunities, and increase the quality of school time spent outdoors. More information regarding the ED-GRS program can be found at <http://www2.ed.gov/programs/green-ribbon-schools/index.html>.

Proposed Priority:

Establish a Clearinghouse to collect and disseminate research and other information on effective practices regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools in order to--

(a) Help education stakeholders increase their use of education facilities to turn around low-performing schools and close academic achievement gaps;

(b) Increase understanding of how education facilities affect community health and safety and student achievement;

(c) Identify potential cost-saving opportunities through procurement, energy efficiency, and preventative maintenance;

(d) Increase the use of education facilities and outdoor spaces as instructional tools and community centers (e.g., outdoor classrooms, school gardens, school-based health centers); and

(e) Increase capacity to identify hazards and conduct vulnerability assessments, and, through facility design, increase safety against hazards, natural disasters, and intruders.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, the Department considers only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

PROPOSED REQUIREMENTS:

The Assistant Secretary proposes the following requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect.

Background:

The following proposed requirements describe the four core activities of the Clearinghouse: developing and maintaining a Web site to facilitate public access to electronic resources and research; developing resource materials and compiling best practices to assist in the creation of safe, healthy, and high-performing facilities; developing and implementing training programs for various education stakeholders; and providing direct, specialized technical assistance to schools and LEAs. With these requirements, we seek to clarify that the applicant must include in its application its plan to implement these four core activities.

Proposed Requirement 1--Establish and Maintain a Web site.

An applicant must include in its application a plan to establish and maintain a dedicated, easily-accessible Web site that will include electronic resources (e.g., links to published articles and research) about the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools. The Web site must be established within 120 days of receipt of the award and must be maintained for the duration of the project.

Proposed Requirement 2--Track and Compile Best Practices and Develop Resource Materials.

An applicant must include in its application a plan to track and compile best practices at the State, LEA, and school levels and a plan to develop resources that support the planning, design, financing, procurement, construction, improvement, operation, and maintenance of safe, healthy, and high-performing facilities for elementary and secondary schools.

Proposed Requirement 3--Training.

An applicant must include in its application a plan to develop and conduct at least two training programs per year for individuals in leadership positions (such as business or operations managers) in elementary or secondary schools

or LEAs, who are responsible for the construction and or maintenance of elementary and secondary education facilities. Training topics must include information on the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities in order to improve the capacity of elementary and secondary schools or LEAs to make quality decisions regarding safe, healthy, and high-performing elementary and secondary education facilities. Training must be conducted upon request by the Department, elementary and secondary schools, States, or LEAs, and must be conducted by appropriate Clearinghouse staff or contractors.

Proposed Requirement 4--Technical Assistance.

An applicant must include in its application a plan to provide technical assistance, including a plan for providing on-site technical assistance to elementary schools, secondary schools, or LEAs, about issues related to the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. The technical assistance may be provided in the form of electronic or telephone assistance when requested by these schools, LEAs, or the Department. On-site technical assistance visits will be conducted upon request by, or based on input from, the Department,

elementary schools, secondary schools, or LEAs and must be completed using appropriate Clearinghouse staff or contractors. The Department must approve in advance all technical assistance visits.

The technical assistance must consist of consultation regarding the planning, design, financing, procurement, construction, improvement, operation, and maintenance of education facilities. Specific technical assistance topics may include information related to: assessing facilities and construction plans for energy efficiency; conducting vulnerability assessments; and developing written plans to retrofit education facilities to address identified hazards and security concerns. Technical assistance may also address low-cost measures that can be taken to enhance the safety and security of schools.

Final Priorities and Requirements:

We will announce the final priorities and requirements in a notice in the Federal Register. We will determine the final priorities and requirements after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these priorities and requirements, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these proposed priorities, and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among

alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

These proposed priorities and requirements would benefit individual children by supporting the development and enhancement of safe, secure, and healthy school practices that would provide educators and stakeholders with timely and useful information to guide policy and decision making for education facilities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part

79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article

search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 3, 2013

Deborah S. Delisle,
Assistant Secretary for Elementary and
Secondary Education.

[FR Doc. 2013-10962 Filed 05/08/2013 at
8:45 am; Publication Date: 05/09/2013]